Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
BroadStreet Communications, Inc.	)	
	)	File No. EB-02-TC-001
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 20023217-0001
	)	
	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 26, 2002 **Released: April 29, 2002**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"),[1] we find that BroadStreet Communications, Inc. ("BroadStreet")[2] apparently willfully or repeatedly violated section 214(a) of the Communications Act of 1934, as amended (the "Act"),[3] and sections 63.61, 63.71, and 63.505 of the Commission's rules[4] by discontinuing its domestic interstate access service in Baltimore, Maryland, and Norfolk, Virginia, as well as all of its long distance service, before receiving authorization to do so from

[1] *See* 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must assess such penalties through the use of a written notice of apparent liability.

[2] BroadStreet is otherwise known as Net Impact Communications, Inc. and is a subsidiary of BroadStreet Communications Holdings, Inc., which is a subsidiary of BroadStreet Communications, L.L.C. BroadStreet Communications, Inc. is also affiliated with BroadStreet Communications of Virginia, L.L.C. Its main office is at 601 Technology Drive, Southpointe, Canonsburg, PA 15317. Randolph S. Fowler is Chairman and CEO; Thomas W. Cady is President and COO; and Philip M. Fraga is Senior Vice President and General Counsel. BroadStreet has blanket operating authority from the Commission under sections 63.01 and 63.02 of the Commission's rules, 47 C.F.R. §§ 63.01, 63.02.

[3] 47 U.S.C. § 214(a). This section provides in pertinent part that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service…."

[4] 47 C.F.R. §§ 63.61, 63.71, 63.505.

the Commission. Based upon our review of the facts and circumstances surrounding these apparent violations, we find that BroadStreet is apparently liable for a forfeiture in the amount of five thousand dollars ($5000) for each violation, resulting in a total proposed forfeiture of $15,000.[5]

II. BACKGROUND

2. BroadStreet is a non-dominant provider of local exchange, exchange access, resold long distance, and data services in twelve states. BroadStreet Communications, L.L.C., the parent organization, is a limited liability company, under which limited unitholders were required to make capital contributions upon call by the management. According to BroadStreet, on November 1, 2001, one of its three equity investors refused to make the required capital contribution, and the other equity investors advised they would not fund BroadStreet unless another investor was found who would replace the contribution of the first investor.[6] While management sought to continue BroadStreet's operations, the three equity investors advised on December 7, 2001, that because BroadStreet was at or near insolvency absent additional funding, the company had to wind down operations. As a result, BroadStreet received from its equity investors $450,000 to ensure transition time for BroadStreet's customers and provide time for the necessary Federal and state regulatory approvals, as well as for liquidation by BroadStreet's senior secured creditor and dissolution of the BroadStreet companies.[7] As of the middle of February, there were only four BroadStreet employees who would be paid for approximately one more month.[8] Despite BroadStreet's alleged financial insolvency, the company has stated to the Commission that it does not intend to file for bankruptcy.[9]

3. As a result of these funding decisions, on December 7, 2001, Broadstreet ceased paying its bills to the facilities-based providers whose services BroadStreet resold. Once those carriers became aware of BroadStreet's situation, they were reluctant to continue service to BroadStreet; the intervention of the Virginia and Maryland State Commissions persuaded some of these carriers to continue service for a short period of time.[10] BroadStreet terminated long distance service on or about December 7, 2001. BroadStreet terminated local service and exchange access in Baltimore, Maryland on December 13, 2001, resulting in a loss of service on 583 lines. BroadStreet terminated local service and exchange access in Norfolk, Virginia, first for one day on December 18, 2001, and then permanently on January 11, 2002, resulting in a loss of service on 781 lines.[11]

4. After being contacted by the Commission staff, BroadStreet filed with the Commission on December 18, 2001, an application for discontinuance of all of its interstate services.[12] The Commission staff issued a Public Notice on December 19, 2001,[13] and the application was automatically granted on January 19, 2002. By that date, however, all long distance service had been terminated, and

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[5] *See* 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2).

[6] Letter dated February 19, 2002, from Philip M. Fraga, BroadStreet, to Peter G. Wolfe, FCC ("BroadStreet Letter").

[7] BroadStreet Letter.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] An application had been filed on October 9, 2001 to discontinue service in Roanoke, Virginia, and this application was granted on November 28, 2001, before service was terminated there.

[13] Public Notice, "Comments Invited on BroadStreet Communications, Inc. and BroadStreet Communications of Virginia, LLC Application to Discontinue Domestic Telecommunications Services," NSD File No. W-P-D-551, DA 01-2972.

exchange access service had been terminated in Baltimore and Norfolk.[14] As of January 24, 2002, 421, or 72% of the Baltimore lines, and 675, or 86% of the Norfolk lines, had been transferred to other carriers.[15] It is not known whether the remaining 268 lines in those locations were abandoned by the customers or whether they represented customers who lost all service.[16]

II. DISCUSSION

A. Violations Evidenced in the Record

5. BroadStreet's responses to our staff's inquiries establish that BroadStreet did not meet its obligations as a common carrier to seek Commission approval before it discontinued service, in apparent violation of section 214(a) of the Act and sections 63.61, 63.71, and 63.505 of the Commission's rules. Section 214(a) has an essential role in the Commission's efforts to protect consumers. Unless the Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives.[17] We therefore intend to strictly enforce section 214 and our rules regarding prior authorization of discontinuances.

6. BroadStreet should have filed for authorization as soon as it knew that discontinuance would be required. Although BroadStreet contends that it had no choice but to discontinue service when it did, it appears that the deadlines were imposed by BroadStreet's Board of Directors, and were not long enough to permit expeditious Commission action on a discontinuance application, BroadStreet knew by November 1, 2001, that it might have to discontinue service, and it should have made a timely decision to seek such approvals based on the anticipated length of time it would take to notify customers and obtain regulatory approvals for the discontinuances. Instead it waited until December 18, 2001 to file its application, after it had already discontinued service to some customers. Further, BroadStreet's actions were apparently caused by the actions of its own limited unitholders. Although these limited unitholders may be protected by their agreement from liability for the actions of the company,[18] BroadStreet nonetheless had legal obligations to notify customers and obtain Commission approval before discontinuing service. In view of the foregoing facts, it appears that BroadStreet willfully or repeatedly discontinued service without Commission authorization in violation of section 214(a) of the Act and sections 63.61, 63.71, and 63.505 of the Commission's rules.

B. Forfeiture Amount

7. The forfeiture guidelines establish a base forfeiture amount of $5000 per violation for

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[14] Local service and exchange access in Washington, D.C., Pittsburgh, Pennsylvania, and Richmond, Virginia was not terminated until after the Commission authorized discontinuance on January 19, 2002.

[15] BroadStreet Letter.

[16] Our staff held a telephone conference with BroadStreet employees, including its Vice President and General Counsel, on January 8, 2002, and sent a letter of inquiry to BroadStreet on January 23, 2002. BroadStreet filed a response on February 19, 2002.

[17] *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 and Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No.97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11380-81 (1999).

[18] According to the company's Limited Liability Company Agreement, if unitholders refuse to make contributions, the only remedy is to deprive them of their voting rights and rights as members of the Board of Directors, and to permit the company to repurchase their units. *See* BroadStreet Letter, Attachment, Second Amended and Restated Limited Liability Company Agreement (May 30, 2001).

unauthorized discontinuance of service.[19] BroadStreet first discontinued service for long distance, then for exchange access in Baltimore, and finally for exchange access in Norfolk. Because there were three violations, *i.e.*, unauthorized discontinuances of long distance service and of exchange access service in these two locations, this results in a total proposed forfeiture of $15,000.

III. CONCLUSION AND ORDERING CLAUSES

8. We have determined that BroadStreet apparently violated section 214(a) of the Communications Act and sections 63.61, 63.71, and 63.505 of the Commission's rules by discontinuing service on three separate occasions without Commission authorization, as described above. We have further determined that BroadStreet is apparently liable for forfeitures in the amount of $5000 for each of the violations, resulting in a total forfeiture amount of $15,000.

9. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, and authority delegated by section 0.311 of the Commission's rules, 47 C.F.R.§ 0.311, that BroadStreet Communications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of $15,000 for willful or repeated violations of section 214(a) of the Act[20] and sections 63.61, 63.71, and 63.505 of the Commission's rules as described in the paragraphs above.[21]

10. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice of Apparent Liability, BroadStreet Communications, Inc. SHALL PAY the full amount of the proposed forfeiture[22] OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

11. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Philip M. Fraga, Senior Vice President and General Counsel, BroadStreet Communications, Inc., 601 Technology Drive, Suite 300, Southpointe, Canonsburg, Pennsylvania 15317.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

[19] 47 C.F.R. § 1.80.

[20] 47 U.S.C. § 214(a).

[21] 47 C.F.R. §§ 63.61, 63.71, 63.505.

[22] The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on BroadStreet Communications, Inc.'s check or money order to "NAL/Acct. No. 20023217-0001." Such remittances must be mailed to Forfeiture Collection section, Finance Branch, federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.